

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAZ AIRK JOSHUA MCKENZIE,

Plaintiff,

v.

STATE OF WASHINGTON; UNITED
STATES,

Defendants.

CASE NO. 2:23-cv-99

ORDER

1. INTRODUCTION

Pro se Plaintiff Kaz Airk Joshua McKenzie pursues this action in forma pauperis (IFP). Dkt. No. 5. After reviewing the sufficiency of his complaint under 28 U.S.C. § 1915(e)(2)(B), the Court finds that McKenzie fails to state a claim on which relief may be granted. Rather than dismissing his case outright, however, the Court grants McKenzie leave to amend his complaint within 30 days of this Order to address the problems identified below to save his case from dismissal.

2. BACKGROUND

The Court granted McKenzie IFP status on February 14, 2023. Dkt. No. 6. At the time, United States Magistrate Judge Michelle L. Peterson “recommend[ed] the

1 complaint be reviewed under 28 U.S.C. § 1915(e)(2)(B) before issuance of summons.”
2 Dkt. No. 6.

3 McKenzie brings claims under the Court’s federal question jurisdiction, 28
4 U.S.C. § 1331, “for himself, and on behalf of all affected persons” against the State
5 of Washington and the United States of America, alleging that “[t]he Sex Offender
6 Registration National Act (SORNA) violates the Constitution's Fifth and Sixth
7 Amendments.” Dkt. No. 7 at 1, 4. McKenzie asserts that the State of Washington
8 and the United States both apply SORNA and are therefore both in violation of the
9 Constitution. *Id.* McKenzie asserts that “[e]very required registration is a new
10 violation of that citizen's 5th and 6th Amendment rights” and that “[f]or Mr.
11 McKenzie, the most recent violation of these rights is ongoing in Island County,
12 Washington.” *Id.*

13 McKenzie seeks (i) monetary damages in the amount of “\$25,000 per year on
14 the registry”; (ii) “[d]estruction of the registry that SORNA requires be maintained”;
15 (iii) “[d]estruction of the criminal records of all citizens affected by SORNA or a
16 comparable State Statute”; (iv) a Court order compelling “the immediate release of
17 any citizen held for violation of SORNA or a comparable State statute”; and (v) “a
18 Declaration and related Orders that SORNA and any analogous State statute is
19 Unconstitutional, void, and [illegible].” *Id.*

21 3. DISCUSSION

22 When a plaintiff proceeds in forma pauperis, the court must dismiss the
23 action if the court determines the action is frivolous or malicious, fails to state a
24 claim on which relief may be granted, or seeks monetary relief against a defendant

1 who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). Under the Federal Rules
2 of Civil Procedure, “[p]leadings must be construed so as to do justice.” Fed. R. Civ.
3 P. 8(e). Therefore, a “document filed pro se is to be liberally construed and a pro se
4 complaint, however inartfully pleaded, must be held to less stringent standards
5 than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94
6 (2007) (citations omitted). Courts are not to “dismiss a pro se complaint without
7 leave to amend unless ‘it is absolutely clear that the deficiencies of the complaint
8 could not be cured by amendment.’” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.
9 2015) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Schucker*
10 *v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir.1988) (per curiam))). Yet, even so, the
11 duties imposed on the Court by § 1915(e) are unwavering, and when an IFP plaintiff
12 fails to state a claim on which relief may be granted, the action must be dismissed.

13 McKenzie challenges the constitutionality of the Sex Offender Registration
14 National Act (SORNA), 34 U.S.C.A §§ 20901-20962, arguing that each sex offender
15 registration compelled under SORNA violates that citizen’s Fifth and Sixth
16 Amendment rights. Dkt. No. 7 at 4. When challenging the constitutionality of a
17 statute, a plaintiff may challenge the statute on its face—a facial challenge—or as
18 the statute is applied in the plaintiff’s particular circumstance—an as-applied
19 challenge. *See Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998). To
20 prevail on a facial challenge, the plaintiff must generally show that “no set of
21 circumstances exists under which the Act would be valid.” *United States v. Salerno*,
22 481 U.S. 739, 745 (1987). Because of this stringent standard, a facial challenge is
23 “the most difficult challenge to mount successfully.” *Id.* By contrast, an as-applied
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1 challenge “contends that the law is unconstitutional as applied to the litigant’s
2 particular... activity, even though the law may be capable of valid application to
3 others.” *Foti*, 146 F.3d at 635.

4 McKenzie never specifies whether he challenges SORNA facially or as
5 applied, so the Court considers his complaint under both theories. McKenzie’s
6 complaint provides only conclusory assertions of SORNA’s facial
7 unconstitutionality, devoid of facts and legal analysis. When considering whether a
8 complaint states a justiciable claim on which relief may be granted, courts may not
9 give credence to such conclusory assertions of law. *See Ashcroft v. Iqbal*, 556 U.S.
10 662, 678 (2009) (“[T]he tenet that a court must accept as true all of the allegations
11 contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of
12 the elements of a cause of action, supported by mere conclusory statements, do not
13 suffice.”); *see also Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
14 Cir. 1982) (“Vague and conclusory allegations of official participation in civil rights
15 violations are not sufficient to withstand a motion to dismiss.”).

16 Further, McKenzie does not address or distinguish any of the binding
17 precedential authority upholding the constitutionality of SORNA. *See, e.g., U.S. v.*
18 *Juv. Male*, 670 F.3d 999, 1008-1014 (9th Cir. 2012) (“SORNA’s requirements satisfy
19 rational basis review and do not violate the Equal Protection Clause.”) (“Given the
20 high standard that is required to establish cruel and unusual punishment, we hold
21 that SORNA’s registration requirements do not violate the Eighth Amendment.”)
22 (“[SORNA does not implicate the Fifth Amendment protection against self-
23 incrimination because it] does not require the disclosure of any information that
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1 would constitute admission of an uncharged crime.”) (“Given the limited range of
2 rights that have been recognized as ‘fundamental’ for the purposes of substantive
3 due process analysis, defendants have failed to establish a substantive due process
4 violation.”) (“[A]dequate procedural safeguards at the conviction stage are sufficient
5 to obviate the need for any additional process at the registration stage.”). To mount
6 a non-frivolous facial constitutional attack against SORNA, McKenzie needs to
7 plausibly demonstrate that binding precedent does not preclude his claim.

8 As for a potential as-applied challenge, the appropriate inquiry at this stage
9 is whether McKenzie has sufficiently alleged plausible constitutional violations. But
10 McKenzie’s factual allegations on this front are unclear, inexplicit, and indirect,
11 stating only that “[f]or Mr. McKenzie, the most recent violation of these rights is
12 ongoing in Island County, Washington.” *Id.* This is not enough to state a plausible
13 claim that SONRA is unconstitutional as applied.

14 McKenzie’s complaint suffers from other defects as well. McKenzie appears to
15 seek monetary relief against defendants who are immune from such relief.
16 Generally, to state a claim against the U.S. Government, a plaintiff must assert
17 compliance with the Federal Tort Claims Act’s administrative requirements or
18 identify some other waiver of the Government’s sovereign immunity. *See Gillespie v.*
19 *Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980) (“The timely filing of an administrative
20 claim is a jurisdictional prerequisite to the bringing of a suit under the FTCA, ... ,
21 and, as such, should be affirmatively alleged in the complaint. A district court may
22 dismiss a complaint for failure to allege this jurisdictional prerequisite.”); *see also*
23 *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006) (“The United States,
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1 as sovereign, can only be sued to the extent it has waived its sovereign immunity.”).
2 Likewise, the State of Washington enjoys sovereign immunity under the Eleventh
3 Amendment. *See* U.S. Const. Amend. XI (“The Judicial power of the United States
4 shall not be construed to extend to any suit in law or equity, commenced or
5 prosecuted against one of the United States by Citizens of another State, or by
6 Citizens or Subjects of any Foreign State.”); *see also Hans v. Louisiana*, 134 U.S. 1
7 (1890) (holding that Eleventh Amendment immunity extends to suits against a
8 State or its agencies by citizens of that same State); *Los Angeles County Bar Ass’n v.*
9 *Eu*, 979 F.2d 697, 704 (9th Cir. 1992) (“The Eleventh Amendment generally bars the
10 federal courts from entertaining suits brought by a private party against a state or
11 its instrumentality in the absence of state consent.”). Litigants attacking the
12 constitutionality of government action must generally sue not the sovereign itself,
13 but rather individual government officers—whether in their official capacities (for
14 declaratory/injunctive relief), individual capacities (for monetary relief), or both (for
15 both types of relief). Alternatively, litigants may bring official-capacity actions
16 against *local* government units/agencies under *Monell*. *See Monell*, 436 U.S. 658
17 (1978).

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19 Finally, on a technical point, McKenzie failed to sign his complaint as
20 required by the Federal Rules. Dkt. No. 7 at 5 (unsigned signature page); *see* Fed. R.
21 Civ. P. 11(a) (“Every pleading, written motion, and other paper must be signed by at
22 least one attorney of record in the attorney’s name—or by a party personally if the
23 party is unrepresented.”). This failure represents an additional potential ground for
24 dismissal.

1 For all the above-stated reasons, the Court concludes that McKenzie's
2 complaint does not state a claim on which relief may be granted and seeks
3 monetary relief against defendants who are immune from such relief—and
4 therefore cannot proceed. The Court orders McKenzie, within thirty (30) days of this
5 Order, to submit an amended complaint—properly signed and certified—that fixes
6 the above-discussed pleading deficiencies.

7 **4. CONCLUSION**

8 The Court FINDS that the complaint, Dkt. No. 7, fails to state a claim on
9 which relief may be granted and seeks monetary relief against defendants who are
10 immune from such relief. The Court GRANTS McKenzie leave to amend the
11 complaint and ORDERS McKenzie, within thirty (30) days of this Order, to submit
12 an amended and properly signed complaint that states a claim on which relief may
13 be granted. Failure to do so will result in dismissal of this action under 28 U.S.C. §
14 1915(e)(2)(B).

15 It is so ORDERED.

16 Dated this 10th day of October, 2024.

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20 Jamal N. Whitehead
21 United States District Judge
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